

at SBA's discretion, and no appeal may be taken with respect to that decision.

(2) The SBA Administrator on a non-delegable basis may waive the requirement prohibiting a Participant from receiving further sole source 8(a) contracts when the Participant does not meet its non-8(a) business activity target where the head of a procuring activity represents to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

§ 124.510 What percentage of work must a Participant perform on an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for small business set-aside prime contractors, and are set forth in § 125.6 of this title.

(b) A Participant must certify in its offer that it will meet the applicable percentage of work requirement. SBA will determine whether the firm will be in compliance as of the date of award of the contract for both sealed bid and negotiated procurements.

(c) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of costs on an indefinite quantity 8(a) award is performed by the Participant, the Participant must demonstrate semiannually that it has performed the required percentage to that date. For a service or supply contract, this does not mean that the Participant must perform 50 percent of the applicable costs for each task order with its own force, or that a Participant must have performed 50 percent of the applicable costs at any point in time during the contract's life. Rather, the Participant must perform 50 percent of the applicable costs for the combined total of all task orders issued to date at six month intervals.

Example to paragraph (c)(1). Two task orders are issued under an 8(a) indefinite quantity service contract during the first six months of the contract. If \$100,000 in personnel costs are incurred on the first task

order, 90% of those costs (\$90,000) are incurred for performance by the Participant's own work force, and the second task order also requires \$100,000 in personnel costs, the Participant would have to perform only 10 percent of the personnel costs on the second task order because it would still have performed 50% of the total personnel costs at the end of the six-month period (\$100,000 out of \$200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

Example to paragraph (c)(2). Where a contract guarantees a minimum of \$100,000 in professional services and the first task order is for \$60,000 in such services, the Participant may perform as little as \$10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to \$40,000 to ensure that it performs 50% of the \$100,000 guaranteed minimum (\$10,000 + \$40,000 = \$50,000 or 50% of the \$100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.